

# Interregional Organizations (IROS) in Europe: new subjects of contemporary international law?\*

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## Abstract

The topic of this paper is the concept of international legal personality and its applicability to the new-coming participants in legal relations in the international community. Interregional organizations (IROS) gathering in their membership various sub-State entities of different States have appeared in the recent decades as a new form of institutionalized international cooperation but on the sub-State level. The entities like European Groupings of Territorial Cooperation (EGTCs) and Euroregional Co-operation Groupings (ECGs), Association of European Border Regions (AEBR), Assembly of European Regions (AER), or Euroregions that can be found under different names such as “euregios”, “euregios”, “cross-border” or “transfrontier associations”, “communautés d'intérêts”, “working communities” etc., equally as so-called hybrid or quasi-IROS (QUAIROS), have undoubtedly achieved some of the elements of international legal personality. Some of them conclude treaties with States and IGOs, the others send and receive representatives in their relations with States and IGOs. Starting from the understanding of legal personality as primarily *de facto* category, this paper analyzes the place and role of these IGO-like entities in contemporary international community having in mind that the subjects of international law appear, exist and die following the meta-juridical logic of functionality in international relations rather than due to a doctrinal “recognition”.

**Key-words:** subjects of international law, international legal personality, interregional organizations, European Groupings of Territorial Cooperation (EGTCs), Euroregional Co-operation Groupings (ECGs) Association of European Border Regions (AEBR), Assembly of European Regions (AER).

## 1 Introduction

More than a half century ago the International Court of Justice (ICJ) in its well-known Advisory opinion in the so-called “Reparation case” expressed the understanding of international legal personality that was going to determine development of that concept in international legal theory and practice in the forthcoming decades: “The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community.”<sup>1</sup> Thus, in distinction from the international law doctrine at the beginning of the previous century that considered States the only subjects of international law,<sup>2</sup> the doctrine in the second half of the

1 INTERNATIONAL COURT OF JUSTICE. Reparation for injuries suffered in the service of the United Nations, 11 april 1949. Available at: <<http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=41&case=4&code=usun&p3=4>>. Accessed on: 23 sep. 2013. p. 178.

2 Thus, for example, in its Manual of International Law in 1902 Liszt began the Chapter on subjects of International Law with the following wording: “*Nur die Staaten sind Subjekte des Völkerrechts: Träger von völkerrechtlichen Rechten und Pflichten.*“ Liszt, F. von, *Das Völkerrecht – systematisch dargestellt*, Berlin, Verlag von O. Haering, 1902, p. 34. Similar attitude was expressed by the Permanent Court of International Justice in the Case concerning the S.S. “Lotus” in 1927; see: Judgment No. 9, 1927,

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20<sup>th</sup> century turned primarily to the postulations of general theory of law. Such approach has abstracted the notion of international legal personality from any particular entity, defining it by the general elements of legal personality in theory – the legal capacity (*capacitas iuridica*) and the capacity of an entity to produce legal consequences on its own (*capacitas agendi*).<sup>3</sup> This being so, the door of international legal personality were opened for any international entity whose *de facto* participation in international relations has become intensive enough to result with its legal regulation providing such an entity with the rights and duties, i.e. with the necessary element of legal personality – the legal capacity. Consequently, the international legal personality became a pure factual category independent from any additional recognition by other, already “indisputable” subjects of international law. Thus, the international law doctrine in the 1980s finally identified the subjects of international law with the participants in legally regulated international relations.<sup>4</sup> Although this topic could seem as a pure theoretical issue, it has recently inspired a number of debates, including on the NGOs-IGOs Relationships.<sup>5</sup> After all, one should not be surprised with the importance of this topic even in contemporary legal doctrine bearing in mind that the question of legal personality is usually the central

issue in every legal system. Thus, as Mosler correctly remarked:

Tout ordre juridique particulier – droit étatique, canonique, droit international public, ordre d’organismes spéciaux – définit le cercle de ses sujets, d’après son but et ses besoins. Il attache cette qualité en premier lieu aux personnes dans le rapport desquelles il veut réaliser cette idée spécifique du droit à sa base.<sup>6</sup>

However, such development has neither deprived States from their international legal personality, nor has it put in question their place in contemporary international community. Yet, States had to find their place among the other participants in international legal relations. The functional logic of international relations followed by the technological development in the previous century has considerably facilitated the co-operation across the States’ borders, as well as its institutionalization. Such a co-operation has resulted not only with establishing of inter-governmental organizations (IGOs), but also with appearing of specific IGO-like entities – the interregional organizations (IROS) composed of local States’ organs, sometimes gathering in their membership even the States themselves (quasi-interregional organizations – QUAIROs). While the IGOs today are unanimously accepted as subjects of international law, those IGO-like entities still wait for their place in international law doctrine, being from time to time just the topic of research and analyses in the papers like this one.

## 2 Interregional organizations (IROS) – new forms of institutionalized sub-state co-operation in Europe

The development of technology in the previous decades, as we have mentioned above, enabled not only the public but also the private law subjects including individuals from different States to co-operate directly across the States’ borders. At the same time, the enlargement of the scope of international issues has meant that central governments have been faced with the internationalized activities that made the centralized decision-making process harder than ever. This situation has necessarily led to the co-operation on the sub-State, i.e. inter-regional level. Gradually, such a co-operation has become more and more institutionalized

*P.C.I.J. Series A*, No. 10, p. 18.

3 Cf. e.g.: EUSTATHIADES, C. Th. Les sujets du droit international et la responsabilité internationale : nouvelles tendances. *RCADI*, v. 84, n. 3, 1953. p. 414-415; CAPOTORTI, F. Cours général de droit international public, *RCADI*, v. 248, n. 4, 1994. p. 42; Brownlie, I. *Principles of public international law*. Oxford: Clarendon Press, 1973. p. 60; JENNINGS, R. ; WATTS, A. (Ed.). *Oppenheim’s International Law*. London: Longman, 1995. v. 1. p. 119-120.

4 Cf. e.g.: HIGGINS, R. Conceptual thinking about the individual in international law. In: FALK, R. (ed.); KRATOCHWIL, F. (ed.); MENDLOWITZ, S. H. (ed.). *International law: a contemporary perspective*. Boulder; London: Westview Press, 1985. p. 480. Shaw, however, makes difference between legal personality and participation of an entity in international relations. For him, “international personality is participation plus some form of community acceptance.” SHAW, M. N. *International law*. 6 ed. Cambridge: Cambridge University Press, 2008. p. 197.

5 See e.g. ROSSI, I. *Legal status of non-governmental organizations in international law*. Portland: Intersentia, 2010. (International Law, v. 5). p. 152-169. See also: NIJMAN, J. E. Paul Ricoeur and international law: beyond “the end of the subject”: Towards a reconceptualization of international legal personality. In: BIANCHI, A. (ed.). *Non-state actors and international law*. Surrey; Burlington: Ashgate Publishing Company, 2009. p. 79-118. NOWROT, K. Reconceptualising international legal personality of influential non-state actors: towards a rebuttable presumption of normative responsibilities. In: JOHNS, F. (ed.). *International legal personality*. Surrey; Burlington: Ashgate Publishing Company, 2010. p. 369- 392.

6 Vidi: MOSLER, H. Réflexions sur la personnalité juridique en droit international public. In: *Mélanges offerts à Henri Rolin* : problèmes de droit des gens. Paris : Éditions A. Pedone, 1964. p. 239.

having formed some new international entities - i.e. the organizations substantively different from IGOs. Such a process can be particularly visible in the field of transregional co-operation that led in the previous decades to the appearance of IROs gathering formally in their membership the various sub-State entities of different States. Consequently, these organizations differ from IGOs primarily in respect of their membership. Instead of States or other sovereign subjects of public international law, their membership is consisted of regions, sub-national, even federal units and other local authorities from different States. Therefore, according to the contemporary international law doctrine, the constituent instruments of these organizations are not accepted as treaties in terms of Article 5 of the Vienna Conventions on the Law of Treaties of 1969 and 1986.<sup>7</sup> On the other hand, the main difference between the transgovernmental organizations (TGOs) like INTERPOL or Inter-parliamentary Union (IPU) and IROs lies in the fact that in TGOs the central States' organs formally participate in their membership acting on their own behalf although their activities directly affects the international co-operation of their States. On the contrary, the membership of IROs is formally consisted of the territorially determined sub-State entities<sup>8</sup> having legal personality in public law of their States. Therefore, the organs of the sub-State

7 For the text of the Vienna Convention on the Law of Treaties of 1969 see: UNITED UNION. *Vienna Convention on the law of treaties between states and international organizations or between international organizations*. Available at: <<http://legal.un.org/avl/ha/vcltsio/vcltsio.html>>. Accesses on: 3 sep. 2014. For the text of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations see: Official Records of the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations, vol. II (United Nations publication, Sales No. E.94.V.5).

8 In this context, several organizations seem to be an exception. Thus, for example, we can mention here the International Union of Local Authorities (IULA), an organization established in 1913 in the Netherlands with the intention to promote democratic local self-government all over the world. Although the IULA gathers in its membership local authorities from different countries and even different continents, its goals and activities are not territorially determined. In its work the IULA is concentrated on the encouraging decentralization, municipal international co-operation and promoting the democratic local government worldwide. Equally, some other, sometimes called "sectoral" IROs, participating in the AER's membership, can be noted here as well, such as the Assembly of European Wine-Producing Regions - AREV, the Assembly of European Fruit and Vegetable Growing and Horticultural Regions - AREFLH, the Association of Local Democracy Agencies - ALDA, and the Federation of Local Authority Chief Executives in Europe (UDiTE). See: *infra*, note 44.

entities participating in the membership of such IROs will never act on their own behalf, but in the name of the sub-State entities as the formal members of such organizations. Sometimes these IROs obtain the recognition of their legal personality in the States whose sub-State entities participate in their membership as a result of these States' treaty obligations. However, although quite absurdly, sometimes the very Statutes of these organizations deny their legal personality in spite of their participation in legal relations with States, IGOs or other undisputable subjects of international law. Be that as it may, having in mind the nature of legal personality as *de facto* category independent of any formal recognition, we are going to analyze these organizations starting from their actual participation in legally regulated international relations.

## 2.1 European Groupings of Territorial Cooperation (EGTCs) and Euroregional Co-operation Groupings (ECGs)

Contrary to almost unlimited States' sovereignty as understood at the beginning of the 20<sup>th</sup> century, in the last decades some profound changes in the world have taken place, threatening to defy States' borders. Of course, this does not mean that the sovereignty has become an obsolete concept. However, as Pascual and Benner correctly remarked, "sovereignty premised on borders serving as inviolable boundaries simply does not function in a world where money, ideas, capital, labour and even pollution know no bounds."<sup>9</sup> Having in mind the proliferation and diversity of contemporary international relations and their participants some authors came to the conclusion on the appearance of "postnational law".<sup>10</sup> Although one could consider that "the term post-nationalism goes too far",<sup>11</sup> the few would deny a strong transnational character of contemporary international relations characterized not only by the co-operation of individuals and

9 PASCUAL, C.; BENNER, H. Sovereignty's evolution: the role of regions: regional convergence in a transnational world. In: DE LOMBAERDE, Ph.; BAERT F. (Ed.); FELÍCIO, T. (Ed.). *The United Nations and the regions: third world report on regional integration*. Dordrecht; Heidelberg: Springer, 2012. (United Nations University Series on Regionalism, v. 3).

10 More detailed see in: KRISCH, N. *Beyond constitutionalism: the pluralist structure of postnational law*. Oxford: Oxford University Press, 2010. p. 5-14.

11 See: SHAFFER, G., A transnational take on krisch's pluralist structure of postnational law, *EJIL*, v. 23, n. 2, 2012. p. 577-579, 582.

private entities across the States' borders resulting with hundreds of thousands INGOs all over the world, but also by the institutionalized co-operation of regions and other sub-State entities from different, mostly neighbor States related to the questions of their common interest. The institutionalization of such co-operation has resulted with the creation of a new type of "transfrontier organisms" ("*organismes transfrontaliers*") – IROs. Though the cross-border co-operation can also be found in other continents,<sup>12</sup> this process had its culmination exactly at the heart of Europe, as Vedovato interestingly remarked: "...[L]à où sont apparues les premières identités nationales."<sup>13</sup> Thus, the European Parliament in 1960 mentioned for the first time the notion of "Europe of regions" starting thereby the process of interregional co-operation in Europe aiming at diminishing of disparities in development among the European regions and making Europe polycentric.<sup>14</sup> Furthermore, in 1985 the member States of the Council of Europe (CoE) signed the European Charter of Local Self-Government with the aim to enhance "the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the

local population" (Art. 3(1)).<sup>15</sup> On the other hand, the Regulation 1082/2006 of the European Parliament and the Council of 5 July 2006 in its Preamble correctly stated that increase in the number of land and maritime borders in the Community following its enlargement made it necessary to facilitate the reinforcement of territorial co-operation in the Community (i.e. within the EU).<sup>16</sup> One of the most significant forms of such co-operation in Europe today is the European Grouping of Territorial Cooperation (EGTC). Moreover, this Regulation provides the creation of EGTCs as a new type of international entities - i.e. IROs, providing that the tasks and competencies of an EGTC are to be set out in a convention and its statutes, together with its organs and rules for its budget and for the exercise of its financial responsibility.<sup>17</sup> Besides, the Regulation has envisaged the possibility of participation in an EGTC even for the entities from third countries where the legislation of a third country or agreements between the Community (i.e. the EU) member States and third countries so allow.<sup>18</sup> At the same time, "the Regulation has allowed subnational units to conclude a cross-border convention with homologous foreign counterparts for a cross-border co-operation body establishment, no matter if such a possibility was previously granted according to the relevant domestic legal order."<sup>19</sup> However, Article 1 paragraph 3 of the Regulation

12 See: CORNAGO, N. On the normalization of sub-state diplomacy. In: CRIEKEMANS D. (Ed.). *Regional sub-state diplomacy today*. Leiden; Boston: Martinus Nijhoff Publishers, 2010. p. 29.

13 VEDOVATO, G. La coopération transfrontalière, les eurorégions et le Conseil de l'Europe, *Annuaire Européen*, v. 43, 1995. p. 1. Such a phenomenon of direct co-operation between the regions or other sub-State entities of different States today is often described by the notion of "paradiplomacy" or "sub-State diplomacy"; see e.g.: WOLFF, S. Paradiplomacy: scope, opportunities and challenges, *Bologna Center Journal of International Affairs*, v. 10, 2010. Available at: <<http://bcjournal.org/volume-10/paradiplomacy.html>>. Accessed on: 22 may 2013. Although this phenomenon can be found under different names such as "micro-diplomacy", "multilayered diplomacy", or "constituent diplomacy", paradiplomacy has usually been defined as "[...] sub-state governments' involvement in international relations, through the establishment of formal and informal contacts, either permanent or ad hoc, with foreign public or private entities, with the aim to promote socio-economic, cultural or political issues, as well as any other foreign dimension of their own constitutional competences." CORNAGO, N. On the normalization of sub-state diplomacy. In: CRIEKEMANS D. (Ed.). *Regional sub-state diplomacy today*. Leiden; Boston: Martinus Nijhoff Publishers, 2010. note 12, p. 13.

14 For more details on this process, particularly through the INTERREG I, II and III Programs, see: HUET, P. Garcia-Duran. Vers l'Europe des eurorégions? L'objectif de „cohésion territoriale. *Revue du Marché commun et de l'Union européenne*, n. 491, p. 499-502, sep. 2005 p. 499-502. Also, for the INTERREG IV Program see: <<http://www.interreg-fvw1.eu/fr/page.php?pageId=204>>. Accessed on: 4 oct. 2013).

15 COUNCIL OF EUROPE. European charter of local self-government, Strasbourg, 15 october 1985. Available at: <<http://conventions.coe.int/Treaty/EN/Treaties/Html/122.htm>>. Accessed on: 3 sep. 2013.

16 See: EUROPEAN PARLIAMENT AND COUNCIL. Regulation n. 1082/2006. European grouping of territorial cooperation (EGTC). *Official Journal of the European Union*, 31 July 2006.

17 EUROPEAN PARLIAMENT AND COUNCIL. Regulation n. 1082/2006. European grouping of territorial cooperation (EGTC). *Official Journal of the European Union*, 31 July 2006. paras. 10 and 14.

18 EUROPEAN PARLIAMENT AND COUNCIL. Regulation n. 1082/2006. European grouping of territorial cooperation (EGTC). *Official Journal of the European Union*, 31 July 2006. para. 16.

19 Strazzari, D., Harmonizing Trends vs. Domestic Regulatory Frameworks: Looking for the European Law on Cross-Border Cooperation, *European Journal of Legal Studies*, vol. 4, issue 1 (Summer 2011), p. 154. Thus, Strazzari considers the *Groupeement local de coopération transfrontalière* (GLCT), as provided by the Karlsruhe Accord, a legal model that anticipated the following treaties concerning the cross-border co-operation, and even the EGTC Regulation. See: *ibid.*, p. 165. See Art. 11 of the "*Accord de Karlsruhe sur la coopération transfrontalière entre les collectivités territoriales et organismes publics locaux*". The text of the Karlsruhe Accord of 23 January 1996 is available at: <[http://www.ge.ch/legislation/rsg/f/s/rsg\\_A1\\_11.html](http://www.ge.ch/legislation/rsg/f/s/rsg_A1_11.html)>. Accessed on: 23 sep. 2013.



seems to be the most important in the context of this paper, providing that “an EGTC shall have legal personality.” An EGTC acquires legal personality on the day of registration in the EU member State, or publication of its Statutes, whichever day occurs first,<sup>20</sup> while the EGTC members shall inform thereafter the member States concerned as well as the Committee of the Regions about the registration of an EGTC and publication of its statutes.<sup>21</sup> Nevertheless, in the context of the EGTCs’ legal personality the mentioned provision is not much different from those of Article 47 of the Lisbon Treaty on European Union,<sup>22</sup> or Article 104 of the UN Charter which provides: “The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.” In both cases, the international legal personality of these organizations derives from the international legal obligation of the States to recognize their legal personality primarily in their own domestic legal orders. Thus, according to Article 1 of the Regulation the EU member States accept the international legal obligation to recognize the legal personality of the EGTCs by allowing their regions to participate in their membership. In fact, such a situation is very much alike to the notion of *pactum in favorem tertii*, i.e. “third-party beneficiary contract” common not only to the Roman law, or civil law in many States, but also to the general legal theory. Hereby, the States accept the legal obligation comprising at the same time the right of the third party – an EGTC to obtain the recognition of legal personality in these States’ legal orders according to the provisions of the Regulation. Similarly, even today the legal capacity of an individual

in international law derives in a certain degree from the States’ international legal obligations in respect of human rights, where an individual often appears as “the third party beneficiary”. Thus, although primarily directed to the recognition of the EGTCs’ legal personality in domestic legal orders of the EU member States, the same provision indirectly contributes to the acquiring of their international legal personality being a derivation of the international treaty obligation of these States, particularly having in mind the provision of Article 288 of the Lisbon Treaty on the Functioning of the European Union.<sup>23</sup> This being so, the States’ international obligation on the recognition of the legal personality of the EGTCs that fulfilled the conditions required by the Regulation appears at the same time as the EGTCs’ *international right* to such recognition, providing these organizations (although as the third party) with the necessary element of international legal personality – the legal capacity deriving from a treaty as a source of international law.

Furthermore, according to Article 3 of the Regulation, the membership of an EGTC may include the EU member States,<sup>24</sup> regional authorities, local authorities, as well as other bodies governed by public law provided by the Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004.<sup>25</sup> In addition, according to the same Article,

23 Thus, Article 288 para. 2 of the Lisbon Treaty on the Functioning of the European Union states as follows: “A regulation shall have general application. It shall be binding in its entirety and directly applicable in all member States.” For the text of the Lisbon Treaty on the Functioning of the European Union see: EUROPEAN COURT OF JUSTICE. Lisbon treaty on European Union see. *Official Journal of the European Union*, C83/01, v. 53, 30 march 2010.

24 Having in mind the possibility of the States’ membership in EGTCs as provided by Article 3 of the Regulation, such EGTCs, by analogy with so-called “hybrid or quasi-NGOs” (QUANGOs), could be equally understood as “hybrid or quasi-IROS” (QUAIROS); see: *infra*, Chapter 3.

25 According to the Directive, it includes the bodies established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, having legal personality, and being financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or being subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law. EUROPEAN PARLIAMENT AND COUNCIL. *Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts*. *Official Journal of the European Union*, 30 april 2004. Available at: <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_](https://www.gov.uk/government/uploads/system/uploads/attachment_)

20 Regulation 1082/2006, Art. 5, para. 1. Also, Article 2 of the Regulation provides that “where it is necessary under Community or international private law to establish the choice of law which governs an EGTC’s acts, an EGTC shall be treated as an entity of the Member State where it has its registered office.”

21 For the List of 39 EGTCs whose establishment has been notified to the Committee of the Regions of the European Union on 2 October 2013 see: <https://portal.cor.europa.eu/egtc/Register/Pages/welcome.aspx> (accessed on 29 November 2014). For the map of the EGTCs by November 2013 see: [http://cesci-net.eu/tiny\\_mce/uploaded/Europa\\_EGTC\\_ENG1\\_9.png](http://cesci-net.eu/tiny_mce/uploaded/Europa_EGTC_ENG1_9.png) (accessed on 30 November 2014).

22 Thus, Article 47 of the Lisbon Treaty on European Union does not mention expressly the EU *international* legal personality, providing just that: “The Union shall have legal personality.” For the text of the Lisbon Treaty on European Union see: EUROPEAN COURT OF JUSTICE. Lisbon treaty on European Union see. *Official Journal of the European Union*, C83/01, v. 53, 30 march 2010.

associations consisting of bodies belonging to one or more of these categories may also become the members of an EGTC. However, according to paragraph 2 of this Article, an EGTC shall be made up of members located on the territory of at least two EU member States.

Besides, an analogy between the EGTCs and IGOs can be found in Article 10, paras. 1 and 2 of the Regulation providing that an EGTC shall have its organs - at least an assembly, which is made up of representatives of its members; and director who represents the EGTC and acts on its behalf, while the statutes may provide for additional organs with clearly defined powers.

However, as an IRO, the EGTC is unique in the sense that it enables public authorities of various EU member States to team up and deliver joint services, without requiring a prior specific international agreement to be signed and ratified by national parliaments. The EU member States must however agree to the participation of potential members in their respective countries.

Finally, Article 10, para. 3 of the Regulation seems also particularly important in this context providing that “an EGTC shall be liable for the acts of its organs as regards third parties, even where such acts do not fall within the tasks of the EGTC.” By this provision the EGTCs’ liability seems to be regulated more strictly than in the case of the responsibility of IGOs. Pursuant to Article 8 of the Draft articles on the responsibility of international organizations adopted by the ILC in 2011 the conduct of an organ or agent of an international organization shall be considered an act of that organization under international law only provided that such an internationally wrongful act fall “within the overall functions of that organizations [...]”<sup>26</sup> On the contrary, as we have seen, the Regulation does not contain such limitation. What is more, besides the obligations *ex delicto*, the Regulation in its Article 12(2) provides the EGTCs’ liability *ex contractu* envisaging that “an EGTC shall be liable for its debts whatever their nature.” On the other hand, according

to its Article 15, third parties who consider themselves wronged by the act or omissions of an EGTC shall be entitled to pursue their claims against the EGTC, generally before the courts of the EU member State where the EGTC has its registered office, whereby the Regulation, following the above-mentioned logic, has indirectly recognized a kind of international *ius standi in iudicio* for EGTCs. Moreover, such an extensive wording of the Regulation does not exclude at least a hypothetical possibility of committing an internationally wrongful act by an EGTC violating the international rights of an EU member State.

For all these reasons one can hardly deny the increasing presence of the EGTCs in international legal relations which led the authors as Ramirez and Gabbe to the conclusion that the positive experiences with the EGTCs have emphasized the clear need to create and further develop visible and permanent legal structures for territorial co-operation in Europe.<sup>27</sup>

On the other hand, the EGTCs are not the isolated form of such institutionalized transfrontier co-operation in Europe. Beside the EGTCs, a similar type of IROs appeared more recently at the level of the CoE in the form of Euroregional Co-operation Groupings (ECGs). In fact, a possibility of acquiring the legal personality for the “transfrontier co-operation groupings” was envisaged much earlier in the Model interstate agreement (bilateral or multilateral) on transfrontier co-operation groupings having legal personality, contained in the Appendix 1.14 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, signed in Madrid on 21 May 1980 (hereinafter the Madrid Convention).<sup>28</sup> Of course, the Madrid Convention had no intention of using international law in regulation of cross-border co-operation between sub-State entities. Moreover, the Convention in its Article 3 clearly states that the arrangements and agreements concluded between “territorial communities and authorities” have no treaty value.<sup>29</sup> However, the transfrontier co-operation

27 RAMIREZ, M. G.; GABBE, J.; AEBR and EGTC: a long way to success. *Interact*, winter 2013. p. 6.

28 For the text of the Madrid Convention see: *ETS*, No. 106.

29 Thus, the Explanatory report on the Madrid Convention states as follows: “In no event are the central government’s powers in general policy-making or the conduct of international relations affected by the Convention. The Convention does not have the effect of conferring an ‘international’ character on transfrontier relations.” (para. 35a). For the text of the Report see: <<http://conventions.coe.int/Treaty/en/Reports/html/106.htm>>. Accessed

data/file/35922/Classic\_Directive\_1\_13420040430en01140240.pdf>. Accessed on: 3 sep. 2013. The non-exhaustive lists of bodies and categories of bodies governed by public law which fulfill these criteria are set out in Annex III to the Directive.

26 UNITED NATIONS. INTERNATIONAL LAW COMMISSION. *Report of the International Law Commission: sixty-third session, 2011*. Available at: <<http://legal.un.org/ilc/reports/2011/2011report.htm>>. Accessed on: 23 sep. 2013. p. 53.

as conceived by the Convention turned very soon into a dynamic process followed by evolving international legal regulation. In this regard, Pierre-Marie Dupuy anticipated this development in his article of 1977 on regional transfrontier co-operation, considering that international law should not be an obstacle to the regional transfrontier co-operation. On the contrary, international law is supposed to be at its service.<sup>30</sup> Thus, the legal personality of “transfrontier co-operation bodies” has expressly been provided in Article 3 of the Additional Protocol to the Madrid Convention, signed in Strasbourg on 9 November 1995.<sup>31</sup> Later, in 1998 the Protocol No. 2 to the Madrid Convention concerning interterritorial co-operation extended transfrontier co-operation to “interterritorial co-operation” in the meaning of “any concerted action designed to establish relations between territorial communities or authorities of two or more Contracting Parties, other than relations of transfrontier co-operation of neighbouring authorities, including the conclusion of co-operation agreements with territorial communities or authorities of other States.” (Art. 1). Although the Protocol No. 2 does not mention either the “interregional co-operation bodies” or the question of legal personality, it is worth pointing out its Article 4 providing that the Contracting Parties to this Protocol, which are also Contracting Parties to the Additional Protocol to the Madrid Convention “shall apply, *mutatis mutandis*, the aforesaid Protocol to interterritorial co-operation.”<sup>32</sup>

Finally, some of the CoE member States signed in Utrecht in 2009 the Protocol No. 3 to the Madrid Convention, concerning Euroregional Co-operation Groupings (ECGs).<sup>33</sup> According to Article 1 of the

Protocol, the territorial communities or authorities of the States Parties to the Protocol may set up a “transfrontier co-operation body” in the form of ECG on the territory of the member States of the CoE, Parties to this Protocol, with the objective to promote, support and develop the transfrontier and interterritorial co-operation between the ECG members. Beside the territorial communities or authorities of a State Party, the membership of the ECG “may also include the respective member State concerned of the Council of Europe” (Art. 3). According to the Protocol, the ECG shall have a legal personality governed by the law of the CoE member State in which it has its headquarters. What is more, the Protocol provides that “the ECG shall have the most extensive legal capacity accorded to legal persons under that State’s national law” (Art. 2(2)). Thereby, by analogy with the previously described situation concerning the EGTCs, the Protocol, although regulating the ECGs’ legal personality in the domestic legal orders of the States Parties, creates a treaty obligation for these States on recognition of such legal personality turning it, at the same time, into a right established for these organizations as the third party beneficiaries. The ECGs constituent instruments are the agreement between its founding members and the statutes as an integral part of the agreement establishing the ECG. Furthermore, similarly to the case of EGTCs, the Protocol has envisaged the liability of the ECGs, not only with regard to third parties, but also to its members for any breach of the law to which it may be subject (Art. 9). However, some authors point out that while the Protocol and the Regulation seem to be very similar, the Protocol takes into account the fact that due to the broader membership of the CoE in comparison to that of the EU, an ECG could be, at the same time, an EGTC. Therefore, the range of possibilities opened by the Protocol is broader and more flexible than the solutions offered by the EU Regulation.<sup>34</sup>

at: <<http://conventions.coe.int/Treaty/EN/Reports/Html/206.htm>>. Accessed on: 3 oct. 2013.

34 See: MĂTUȘESCU, C. European juridical instruments of territorial cooperation: towards a decentralized foreign policy in Europe? *AGORA International Journal of Juridical Sciences*, n. 2, 2012. p. 92. On the other hand, Strazzari points out that “although the CoE and the EU legal instruments concerning cross-border co-operation are deeply different in their nature and function (with the CoE aimed to provide a minimal common regulation, according to international law standards, and the EU aimed to provide substantial legal harmonization of EU Member States legislations), they share nonetheless the common goal of harmonizing European national

on: 26 aug. 2013.

30 Thus, Dupuy said: “Le droit international, loin d’apparaître un obstacle, serait alors au service de la coopération régionale transfrontalière.” DUPUY, P. M. *La coopération régionale transfrontalière et le droit international*. *AFDI*, v. 23, 1977. p. 854.

31 For the text of the Additional Protocol see: COUNCIL OF EUROPE. Additional protocol to the European outline convention on transfrontier co-operation between territorial communities or authorities. Strasbourg, 1995. Available at: <<http://conventions.coe.int/Treaty/EN/Treaties/Html/159.htm>>. Accessed on: 3 sep. 2013.

32 For the text of the Protocol No. 2 see: COUNCIL OF EUROPE. *Protocol n. 2 to the European outline convention on transfrontier co-operation between territorial communities or authorities concerning interterritorial co-operation*, 1998. Available at: <<http://conventions.coe.int/Treaty/en/Treaties/Html/169.htm>>. Accessed on: 3 oct. 2013.

33 For the text see of the Protocol No. 3 see: COUNCIL OF EUROPE. *Protocol n. 3 to the European outline convention on transfrontier co-operation between territorial communities or authorities concerning euroregional co-operation groupings (ECGs)*: CETS no. 206. Available



## 2.2 Association of European Border Regions (AEBR)

The Association of European Border Regions (AEBR) is one of the oldest IROS in Europe, founded in September 1971. The representatives of eight European regions from different European States signed in Bonn and Strasbourg the Statutes for the Association of European Border Regions (AEBR).<sup>35</sup> Today, the AEBR network is composed of approximately 100 members from the EU and beyond.<sup>36</sup> Thereby, the AEBR differs from the EGTCs whose membership is limited to the EU member States' regions. In paragraph 2 of its Statutes the AEBR is defined as "a registered association" with the headquarters in Gronau (Westphalia, Germany). The same paragraph provides that the headquarters can be moved to another location by decision of the AEBR's General Assembly. This being so, if the AEBR's headquarters moved to another State, the Association would acquire the legal personality according to the law of that State. In this case, the AEBR would continue its legal existence even in the case of withdrawn of its legal personality by the State where its headquarters had been situated. Thus, one can conclude that AEBR's legal personality, although subject to the law of particular State, in some measure goes beyond the mere level of its domestic legal order. After all, the argument in favor to this conclusion can be found in paragraph 14 of the AEBR Statutes providing that the termination of AEBR "can only take place through a specially convened General Assembly for this purpose", i.e. not by the decision of any State. Moreover, according to the Statutes, the

decision on termination shall be made by two-thirds majority of the AEBR members present.

Among the aims of AEBR as provided in paragraph 3 of its Statutes are to represent the interests of the European border and cross-border regions to national and international parliaments, organs, authorities and institutions, as well as to initiate, support and coordinate their co-operation throughout Europe. For this purpose, the AEBR's tasks are to implement programs and projects directed to the cross-border co-operation, to apply for funds and to receive and dispose of them; to organize events regarding cross-border problems; to help to solve cross-border problems and to support special activities; to prepare and implement common campaigns; to extend the Centre for European Border and Cross-border regions in close co-operation with the EU and the CoE; and to inform European political bodies and public about cross-border questions (para. 3(2)).

The European border and cross-border regions in the member States of the EU or CoE can be the full members of the AEBR with the right to vote. Also, according to paragraph 4(1) of the Statutes, the full membership in AEBR is opened to the large-seized amalgamations of border regions within several countries provided not all their members join AEBR individually.<sup>37</sup>

In principle, the rights and duties of the AEBR members do not differ a lot in comparison with those of members of IGOs. Along with the right to vote, to contribute to the work of AEBR and to use its services, programs and facilities, they are required to support the AEBR activities including through the payment of their contributions according to the decisions of the General Assembly and provisions of paragraph 13 of the AEBR Statutes.

Furthermore, even the AEBR's institutional structure does not show much difference comparing to that of IGOs. According to Article 6 of its Statutes the organs of AEBR are General Assembly as the highest and plenary organ in which every full member

legislation and they highlight common legal developments." STRAZZARI, D. Harmonizing trends vs. domestic regulatory frameworks: looking for the european law on cross-border cooperation, *European Journal of Legal Studies*, v. 4, n. 1, p. summer 2011. note 19, p. 154-155.

35 There were the following regions: Regione Autonoma Friuli Venezia Giulia, Conseil Régional de Lorraine, Euregio Kommunalgemeinschaft Rhein-Ems, Sønderjyllands Amt, Ems-Dollart-Region, Castilla y León, Extremadura, i Euregio Scheldemond. The AEBR's General Assembly amended the Statutes in 1994 (in Trieste), and in 1997 (in Salamanca). For the text of the Statutes see: <[http://www.aebr.eu/files/publications/Statutes\\_EN\\_signed.pdf](http://www.aebr.eu/files/publications/Statutes_EN_signed.pdf)>. Accessed on: 18 mar. 2013.

36 Thus, some members of the AEBR come from Armenia, Belarus, Moldova, Norway, the Russian Federation, Serbia, Switzerland, Turkey and Ukraine; see: RAMIREZ, M. G.; GABBE, J.; AEBR and EGTC: a long way to success. *Interact*, winter 2013. note 27, p. 7.

37 Besides the full members, the AEBR membership includes the members with observer status and honorary members, as well as the advisory members, all of them without the right to vote. (para. 4(2-3)). Today, the AEBR gathers more than 60 border and cross-border regions in its full membership. For the Member Regions List see: <[http://www.aebr.eu/en/members/list\\_of\\_members.php](http://www.aebr.eu/en/members/list_of_members.php)>. Accessed on: 19 nov. 2012.



participates with at least one vote.<sup>38</sup> Also, similarly to Article 19 of the UN Charter, the Statutes provide the suspension of the right to vote for a member who is in arrears in the payment of its contribution for the previous and current calendar year (para. 7(2)). Besides, among the AEBR's principal organs the Statutes provide the Executive Committee that includes the President, the first Vice-President and at least three further Vice-Presidents, the Treasurer, and at least 20 members as representatives from the border and cross-border regions (para. 8(2)). Finally, the Statutes also provide the Secretary General as the head of the Secretariat General. According to paragraph 10, the AEBR is represented in its international relations by the President, First Vice-President and Secretary General.<sup>39</sup>

Analyzing the establishing and work of AEBR, it seems that this IRO has initiated the process of institutionalization of interregional co-operation in Europe, having anticipated the latter IROs such as the EGTCs and Euroregions with all their variety in names and structure.

On the other hand, among the more recent AEBR's legal activities it should be mentioned that the AEBR has actively participated in the process of reforming of the place and role of EGTCs within the EU system. Thus, in November 2011 the AEBR made the "Statement", as a kind of "soft law" document, on the Proposal for a Regulation of the European Parliament and of the Council amending the aforementioned Regulation 1082/2006 on a European grouping of territorial cooperation as regards the clarification, simplification and improvement of the establishment and implementation of EGTCs.<sup>40</sup> Similarly, in 2010 the AEBR issued another "soft law" document delivered to the EU Commission: the AEBR Position Paper on the Future EU Strategy 2020 (Post-Lisbon Strategy).<sup>41</sup>

38 According to paragraph 7(2) of the AEBR Statutes the number of votes is regulated by the contribution regulation.

39 Beside these main organs, the Statutes provide the possibility of creating of various committees including the Advisory Committee for Cross-border Co-operation appointed by the Executive Committee (para. 11).

40 AEBR Statement KOM(2011)610 final; 1 November 2011. For the text of the "Statement" see: <[http://www.aebr.eu/files/publications/111129\\_statement\\_proposal\\_EGTC\\_regulation\\_EN\\_clean.pdf](http://www.aebr.eu/files/publications/111129_statement_proposal_EGTC_regulation_EN_clean.pdf)>. Accessed on: 23 sep. 2013.

41 For the text of the AEBR Position Paper see: <[http://www.aebr.eu/files/publications/10\\_01\\_12\\_AGEg\\_Stellungnahme\\_Europa\\_2020\\_EN\\_def.pdf](http://www.aebr.eu/files/publications/10_01_12_AGEg_Stellungnahme_Europa_2020_EN_def.pdf)>. Accessed on: 3 sep. 2013.

Finally, in the context of this paper it is worth noting that on 18 March 2010 the AEBR signed a Co-operation Agreement with one IGO - the CoE represented by its organ - the Congress of Local and Regional Authorities. The Agreement seeks to combine the forces of the both organizations for more effective initiatives in favor of regional authorities and, in particular, in favor of European border regions.<sup>42</sup>

### 2.3 Assembly of European Regions (AER)

The Assembly of European Regions (AER) is a specific IRO established in 1980s with the aim, as defined in its Statutes, "to act as the political voice of the Regions of Europe..."<sup>43</sup> According to the Statutes, the AER is founded as a non-profit association gathering in its membership as full members the regions of the member States of the CoE, as well as other European Regions under the condition that they respect the basic fundamental principles of the CoE. Besides, even the other IROs may become the AER's consultative members (Art. 2).<sup>44</sup> The organizational structure of the AER is analogous to other similar IROs, but also to many IGOs. The AER's main organs are the General Assembly convened at least once a year and consisted of

42 See: <[http://www.aebr.eu/files/publications/100330\\_20\\_AEBR\\_20Newsflash\\_206\\_20EN\\_20final.pdf](http://www.aebr.eu/files/publications/100330_20_AEBR_20Newsflash_206_20EN_20final.pdf)>. Accessed on: 30 may 2013.

43 For the text of the AER Statutes of 12 October 2012 see: ASSEMBLY OF EUROPEAN REGIONS. *Statute*. Paris, 17 march 2013. Available at: <[http://www.aer.eu/fileadmin/user\\_upload/GoverningBodies/GeneralAssembly/Statutes/Statutes-200x/AER\\_Statute\\_17052013-EN.pdf](http://www.aer.eu/fileadmin/user_upload/GoverningBodies/GeneralAssembly/Statutes/Statutes-200x/AER_Statute_17052013-EN.pdf)>. Accessed on: 27 apr. 2013.

44 From its beginning in 1980s, the AER functions as so-called "umbrella organization" gathering in its membership the other IROs. Thus, among the IROs participating in the AER membership today we can mention the AEBR, the Alps-Adriatic Working Community, Eurorégion Alpes Méditerranée, the Working Community of the Danube Countries - ARGE Donauländer, the Working Community Pyrenees (Comunidad de Trabajo de los Pirineos - CTP), the Working Community of the Alps - Arge Alp, the Transjurasian Conference - CTJ, the Working Community Galice - North Portugal, the Baltic Sea States Subregional Cooperation - BSSSC, Channel Art Manche, the World Mountain People Association (WMPA). Together with the above-mentioned territorially determined IROs, in the AER's membership there are also some of these organizations gathering their member regions on the basis of their specific activities such as the Assembly of European Wine-Producing Regions - AREV, the Assembly of European Fruit and Vegetable Growing and Horticultural Regions - AREFLH, the Association of Local Democracy Agencies - ALDA, and the Federation of Local Authority Chief Executives in Europe (UDITE). See: <<http://www.aer.eu/members-and-partners/member-organisations.html>>. Accessed on: 13 jan. 2014.

the representatives of all the AER members; the Bureau as an executive body that ensure the implementation of the decisions of the General Assembly; and the Secretary General who is in charge of the General Secretariat and responsible for implementing the decision of the other AER bodies presenting a yearly report before the General Assembly. Also, the Statutes provide the President as the highest authority of the AER that represents the organization in all external relations, the Vice-Presidents, the Committees and Standing Committees,<sup>45</sup> and the Treasurer. Today, the AER participates in interregional relations in Europe as one of the most significant IROs not only having in mind its numerous membership composed of nearly 230 regions from 35 States and 15 IROs, but also its activities in promoting the cross-border co-operation among the CoE member States. The work of the Organization is complementary to the activities of the CoE, as well as of the EU in realization of their common policies, particularly in consideration of its “Positions” adopted by the AER’s General Assembly. Thus, for example, it is worth mentioning here the AER Position on the European Neighbourhood Policy Reform, adopted by the AER’s General Assembly in November 2011, which initiated the process of redefining of the objectives of future European Neighbourhood Policy (ENP). Moreover, the need for co-operation between the EU and the IROs was recently mentioned by the EU Commissioner Stefan Füle concerning the “need for [...] joint work with the Committee of the Regions” in which context “the interregional organisations should not be ignored.”<sup>46</sup> Consequently, among the objectives of such IGOs-IROs co-operation the AER Position states that the place of interregional and cross-border co-operation in future ENP should be strengthened. Thus, the AER Position calls for multilevel governance and partnership, as well as for paying more attention

to territorial diversity in ENP pointing out at the same time the importance of the decentralization processes in Europe. Finally, the similar attitude can be found within the EU as well. The EU Committee of the Regions in its Mission Statement clearly confirmed the need for involvement of regional and local authorities in the European decision-making process encouraging the co-operation between these authorities of different EU member States.<sup>47</sup>

Among the similar “soft law” documents adopted by the AER, one should not forget the Declaration on Regionalism in Europe. Adopted in 1996, the Declaration, among other things, provides in Article 10 that “regions shall have the capability to act at an international level. They may conclude treaties, agreements or protocols which are international in scope, subject to approval by the central government where is required by national legislation.”<sup>48</sup>

However, maybe one of the most important steps that the AER has made towards the acquiring of personality in international legal relations is the Memorandum of Understanding signed with Tunisia in May 2011.<sup>49</sup> Formally, “the undersigning parties” thereof are the AER and the Ministry for regional development of Tunisia. For this reason, one could conclude that the “Parties” to the Memorandum are actually an IRO and the Ministry as a public law subject of domestic, but not international law, whereby it would stay out of the sphere of interest of public international law. Nevertheless, viewed from within, things could seem different. Starting from the Preamble, the Tunisian Ministry accepts the obligation “to encourage and support the process of decentralization in Tunisia...” Using the teleological interpretation it seems obvious that the Ministry did not act on its own behalf, but as

45 These Committees are the Executive Committee, Committee 1 for Economy and Regional Development, Committee 2 for Social Policy and Public Health, Committee 3 for Culture, Education, Youth and International Co-operation, as well as the Standing Committees for monitoring and evaluation, for institutional affairs and for equal opportunities.

46 See: the AER Position on the European Neighbourhood Policy Reform adopted at the AER General Assembly, Ponta Delgada (Azores), 24 November 2011. The text available at: <[www.aer.eu](http://www.aer.eu)>. Accessed on: 26 apr. 2013. For the Letter by Commissioner Stefan Füle on the AER ENP position 2011 see: <<http://www.aer.eu/en/knowledge-centre/thematic-expertise-thematic-issues/neighbourhood-policy-and-aer-in-the-world/european-neighbourhood-policy.html>>. Accessed on: 24 sep. 2013.

47 EUROPEAN UNION COMMITTEE OF THE REGIONS. Mission Statement. Brussels, 21 apr. 2009. Available at: <<http://cor.europa.eu/en/about/Documents/Mission%20statement/EN.pdf>>. Accessed on: 3 sep. 2013.

48 For the text of the Declaration see: <[http://www.aer.eu/fileadmin/user\\_upload/PressComm/Publications/DeclarationRegionalism/DR\\_GB.pdf](http://www.aer.eu/fileadmin/user_upload/PressComm/Publications/DeclarationRegionalism/DR_GB.pdf)>. Accessed on: 24 sep. 2013. Also, in November 2011 the AER General Assembly adopted the Declaration on Culture and Health. The text of the Declaration available at: <[http://www.aer.eu/fileadmin/user\\_upload/GoverningBodies/GeneralAssembly/Events/AG2011-Acores\\_Adopted/EN-declaration-culture-health.pdf](http://www.aer.eu/fileadmin/user_upload/GoverningBodies/GeneralAssembly/Events/AG2011-Acores_Adopted/EN-declaration-culture-health.pdf)>. Accessed on: 24 sep. 2013.

49 The text of the Memorandum available at: <<http://www.aer.eu/events/governing-bodies/2011/general-assembly-2011-regions-master-globalisation.html>>. Accessed on: 24 sep. 2013.

an organ of Tunisia as a State, particularly having in mind that the above-mentioned obligation does not belong into the sphere of *iure gestionis*, but in *iure imperii* activities of States. What is more, Article III of the Memorandum expressly provides that “Tunisia will be granted observer status at the AER” (stress added). Understood this way, it seems that the Memorandum could be considered a treaty, subject to public international law, or more precisely to the customary international law of treaties.

On the other hand, the AER concluded a similar agreement also called Memorandum of Understanding with the United Nations Development Programme (UNDP). In its Part 2 (called “Agreement”) the Memorandum provides that its purpose is “to establish a basis for cooperation between the UNDP and the AER.” (para 2.1). According to paragraph 2.2., the Memorandum “represents the initial stage in fostering of a concrete partnership between the UNDP and the AER. Both parties undertake to work together and to decide on concrete methods of cooperation.”<sup>50</sup>

In this context it seems appropriate to remind of the provision of Article 2 of the Vienna Convention on the Law of Treaties which clearly states that “‘treaty’ means an international agreement [...] whatever its particular designation.” The similar provision can also be found in the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. Of course, the Conventions leave the international agreements to which one or more States or one or more international organizations and one or more subjects of international law other than States or organizations are parties, outside their scope. However, in their Preambles both Conventions affirm that the rules of customary international law will continue to govern questions not regulated by their provisions. Equally, in their common Article 3 the Conventions provide among other things that the fact that their provisions do not apply to international agreements concluded between States or IGOs and other subjects of international law shall not affect the legal force of such agreements.<sup>51</sup>

50 The text of the Memorandum is available at: <<http://www.aer.eu/en/knowledge-centre/thematic-expertise-thematic-issues/neighbourhood-policy-and-aer-in-the-world/aer-and-undp.html>>. Accessed on: 23 sep. 2013.

51 For the text of the Vienna Convention on the Law of Treaties see: *supra*, note 7. For the text of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations see: *supra*, note 7.

Therefore, these agreements, such as for example those concluded with the Sovereign Order of Malta, various international territorial administrations (ITAs), insurgents, or liberation movements will be subject to the customary international law of treaties sharing mostly the same legal regulation as contained in the Vienna Conventions that resulted from the codification work of the ILC. This being so, all these treaties fulfill the above condition to be “governed by international law”. Consequently, following Aust, a fundamental characteristic of a treaty is its binding character, even if it is called “Memorandum of Understanding” (MOU).<sup>52</sup> On the other hand, the designation of a treaty as a MOU is not as unusual in international practice as it could seem. One of the well-known examples could be the Memorandum of Understanding between the Governments of Italy, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Yugoslavia regarding the Free Territory of Trieste, signed in London in 1954.<sup>53</sup> After all, according to Aust, by August 2006 over 880 instruments called “Memorandum of Understanding” had been registered with the UN Treaty Section and “most of them are probably treaties.”<sup>54</sup>

## 2.4 Euroregions

In his analytic article concerning the transfrontier cooperation in Europe, Vedovato defined “Euroregions” as political territorial organizations that appeared as a symbiosis of the continuing evolution of the historical and cultural, as well as the administrative space in Europe.<sup>55</sup> According to him, such evolving process

52 See: AUST, A. *Modern treaty law and practice*. 2<sup>nd</sup> ed. Cambridge: Cambridge University Press, 2007. p. 27.

53 For the text of the Memorandum of Understanding see: UNTS, v. 235, 1956, p. 100.

54 AUST, A. *Modern treaty law and practice*. 2<sup>nd</sup> ed. Cambridge: Cambridge University Press, 2007. p. 344. In its valuable work Aust precisely elaborates terminological distinctions that can be found between treaties and “non legally binding instruments” sometimes called MOUs. However, although the MOUs are usually characterized for example by the terms like “paragraphs” or “participants”, the above-mentioned Memorandum of Understanding between the AER and Tunisia has used the terms “articles” and “parties” typical for treaties. Cf. UNITED UNION. *Vienna Convention on the law of treaties of 1969*. Available at: <<https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>>. Accessed on: 3 sep. 2013, p. 496.

55 See: VEDOVATO, G. La coopération transfrontalière, les eurorégions et le Conseil de l’Europe, *Annuaire Européen*, v. 43, 1995.



of transfrontier co-operation have been determined by social, economical, political, cultural, and other interests, including the protection of environment as the questions of common interest of population in many cross-border regions.<sup>56</sup>

On the first impression, this process could seem rather contradictory opposing the supranational character of the European integration to the so-called “micro-integration” as equally institutionalized process of co-operation, but on the sub-State level. Be that as it may, according to some authors, such process of institutionalized transfrontier co-operation in Europe is not only irreversible, but also it continues to require a more detailed institutional, i.e. primarily legal regulation.<sup>57</sup> Therefore, one should not be surprised with the increasing number of institutionalized forms of such transfrontier co-operation in Europe that have not always been easily distinguishable one from another. Thus, “euroregions” sometimes seem to be understood as a residual group of IROs, heterogeneous not only in their names and structure, but also in their legal status. Usually gathering in their membership border regions of the neighbor States interested in cross-border co-operation, the euroregions can be found all over Europe and under different names such as “euregios”, “euregions”, “cross-border or transfrontier associations”, “communautés d’intérêts”, “working communities” etc.<sup>58</sup>

note 13, p. 1.

56 Cf. VEDOVATO, G. La coopération transfrontalière, les eurlorégions et le Conseil de l’Europe, *Annuaire Européen*, v. 43, 1995. p. 2.

57 VEDOVATO, G. La coopération transfrontalière, les eurlorégions et le Conseil de l’Europe, *Annuaire Européen*, v. 43, p. 20-21, 1995.

58 Among the European regions it is important to mention the Baltic Sea Region established by the Baltic Sea Strategy of the EU, comprising around 100 million citizens, i.e. 20 per cent of the EU. It was the beginning of the initiative within the EU for creating so-called “macro-regions” as a new model for regional co-operation that later inspired the creation of similar macro-regions in areas such as the Mediterranean and Danube basin. However, until now these “macro-regions” have not yet achieved a sufficient stage of institutionalization to be considered IROs in the above-mentioned meaning. Therefore, we make difference here between a region as a geographically determined area in which the co-operation of the States or their sub-State entities takes place, and the IROs that are established as a result of institutionalization of such a co-operation. For more details on macro-regions in Europe, see: SCHEWE, Ch. Legal aspects of the baltic sea strategy: international law in a european macro-region. *Baltic Yearbook of International Law*, v. 10, 2010. p. 189, 191.

Some of the earliest “transfrontier associations” in Europe can be found in the middle of the 20<sup>th</sup> century, dealing with various cross-border activities such as fishery, tourism, traffic, culture co-operation etc., anticipating the future “Euroregions”. Thus, in 1960s the first euroregions were established, such as Communauté d’intérêts Alsace moyenne – Brisgau, and the Working Community Akershus – Hedemark that gathers the regions along the Norwegian – Swedish border. Soon, the Danish and Swedish regions established the Øresund Region,<sup>59</sup> while in same time the Euregio Rhine - Waal was formed alongside the German-Dutch border.<sup>60</sup> In addition, we can mention here a series of similar euroregions that appeared in the following years, characterized by very developed institutionalized structure, like the Meuse–Rhine Euregion (composed of the Belgian regions Liège and Limbourg, the Dutch region of Limbourg and the German region of Aachen),<sup>61</sup> Regio Basiliensis,<sup>62</sup> Conseil parlementaire interrégional (CPI),<sup>63</sup> Euroregion

59 The main organs of the Region are: Øresund Committee, Øresund Commission, and Øresund Committee’s secretariat established in order to handle activities decided on by the Committee and the Commission. For more details see: <<http://www.oresund.com/oresund/welcome2.htm>>. Accessed on: 11 apr. 2013.

60 Organizational structure of the Euregio Rhine-Waal is composed of the Euregio Council as a plenary organ consisted of 142 representatives of all member regions, who meet at least twice a year. Three committees have been established to prepare Council’s decisions: Committee of Cross-Border Communication, Committee of Commerce, and Committee of Finance and Projects. Besides, the Euroregion has its Chairman and the Board as an executive body. For more details see: <<http://euregio.org/seiten/index.cfm>>. Accessed on: 11 apr 2013.

61 The main bodies of this Euroregion are the Committee of Directors, Euregional Council, Economic and Social Council, Strategic Groups, and Bureau. For more details see: <<http://www.euregio-mr.com/fr/euregiomr/organisation>>. Accessed on: 11 apr. 2013.

62 The main governing bodies of the Regio Basiliensis are the General meeting, the Board of directors and the Monitoring group. The Board of directors is the supreme executive body; it approves the budget, annual accounts and annual report under the auspices of the General meeting as the plenary organ. The Monitoring group is a consultative body consisting mainly of representatives from cantonal parliaments and administrative departments. For more details see: <[http://www.regbas.ch/d\\_Information\\_in\\_English.cfm](http://www.regbas.ch/d_Information_in_English.cfm)>. Accessed on: 11 apr. 2013.

63 The basic document of the Conseil parlementaire interrégional is the Convention relating to the creation of the Conseil Parlementaire Interrégional (CPI), signed in 1986 by the representatives of the Grand Duchy of Luxembourg, Landtag de Rhénanie-Palatinat, Landtag de la Sarre, Conseil Régional de Lorraine, and Conseil Provincial du Luxembourg Belge. According to the Convention, the principal organs of the CPI are: Presidency, Permanent Committee, and the Secretariat. In



“Neisse-Nisa-Nysa” (composed of German, Czech and Polish regions), etc.<sup>64</sup>

It is not rarely that some euroregions can be found under the name of “Working Communities”, like the Working Community Galice - North Portugal, Working Community of the Alps (Arge Alp), the “Eurorégion Alpes Méditerranée” (formerly Communauté de travail des Alpes Occidentales - COTRAO), as well as the Alps-Adriatic Working Community. The last one is particularly important for anticipating, although on the interregional level, the integrative process in the Central Europe starting from 1978, i.e. during the Cold War period when the States whose regions have participated in its membership were still divided by the “iron curtain”.<sup>65</sup> Moreover, the Alps-Adriatic Working Community is even more interesting in the context of this paper since today, following the dissolution of ex-Yugoslavia in 1991 two of its former federal units – Croatia and Slovenia have continued their membership in the Community now as the independent States, turning this organization into a hybrid or quasi-IRO (QUAIRO).<sup>66</sup>

These euroregions, pursuant to Article 3 of the Additional Protocol to the Madrid Convention “may, or may not have legal personality”.<sup>67</sup> However, the addition, the organizational structure of the CPI is composed of six Commissions (Commission 1 for economic affairs; Commission 2 for social affairs; Commission 3 for transports and communications; Commission 4 for environment and agriculture; Commission 5 for education, training, research and culture; and Commission 6 for internal security, civil protection and assistance service. For more details see: <[http://www.cpi-ipr.com/fr/Conventions/conv\\_cre.asp](http://www.cpi-ipr.com/fr/Conventions/conv_cre.asp)>. Accessed on: 11 apr. 2013.

64 Among the euroregions with significantly developed institutionalized structure Vedovato mentions also the euroregions of “Benego”, “Creno” (Conférence des régions de l’Europe du Nord-Ouest), “Comregio”, Institut régional intercommunal, Association transfrontalière du bassin supérieur de l’Alzette, etc. Equally, in the Rhine basin the same author mentions the series of similar IROs being provided with the legal personality, such as the „Regio” gathering the Swiss region of Jura, the German region of Schwarzwald and the French region of Vosges; as well as the euroregions like the “Groupe de consultation franco-allemand”; “Cimab”; and the “Jura Working Community”. See: VEDOVATO, G. La coopération transfrontalière, les eurorégions et le Conseil de l’Europe, *Annuaire Européen*, v. 43, 1995. note 13, p. 8-10.

65 In this context Vedovato has mentioned the euroregion “Egrensis” that was gathering in its membership the cross-border regions of the former Czechoslovakia and the Federal Republic of Germany; see: VEDOVATO, G. La coopération transfrontalière, les eurorégions et le Conseil de l’Europe, *Annuaire Européen*, v. 43, 1995. p. 10.

66 See: *infra*, Chapter 3.

67 For the text see: *supra*, note 31.

very Statutes of some of these euroregions sometimes deny their legal personality leading often to the legally absurd situations. Thus, for example, Article 3, para. 2 of the Statutes of the Euroregional co-operation Danube-Drava-Sava<sup>68</sup> clearly states that the Euroregion does not have the legal capacity, providing at the same time in paragraph 3 of the same Article the *legal duty* for the Euroregion to respect in its work the provisions contained in international legal documents, as well as in the domestic legal orders of the respective States. Having determined the legal capacity as a quality of an entity to possess legal rights and duties, it seems indisputable that the mentioned Euroregion legally exists not only in respect to the duties provided by the domestic legal orders, but also in regard to the international law obligations. After all, Article 15 of its Statutes speaks in favor of this argument providing, similarly to the majority of IGOs constitutions, a serious of rights and duties between the Euroregion and its member regions. In addition, Articles 10 and 11 of the Statutes precisely define the scope of activities of the Euroregion including the cross-border co-operation,<sup>69</sup> while Article 15 regulates even the Euroregion’s business activities. These provisions not only implicitly recognize the legal capacity of such an IRO, but also its capacity to produce legal consequences by its acting, both in regard to its members, as well as to the third parties, including States. Consequently, Article 5 of the Statutes regulates the representation of the Euroregion in its legal relations with other subjects entrusting

68 The Euroregional co-operation Danube-Drava-Sava gathers in its membership the regions from Croatia, Hungary, and Bosnia and Herzegovina. However, its membership is open also to the regions of other States that gravitate towards the rivers Danube, Drava and Sava. The Euroregion is founded by signing its Statutes in Pecs (Hungary) on 28 November 1998. The official name of the Euroregion in Croatian and Hungarian is „Euroregionalna suradnja Dunav-Drava-Sava“ / „Duna-Dráva- Száva Euroregionális Együttműködés“. For the revised text of the Statutes see: <[http://www.ddseuro.org/portal/images/pdf/dokument/Statut%20%20DDS%20-%20procisceni%20tekst%20\\_hr\\_.pdf](http://www.ddseuro.org/portal/images/pdf/dokument/Statut%20%20DDS%20-%20procisceni%20tekst%20_hr_.pdf)>. Accessed on: 4 apr. 2013).

69 Thus, Articles 10 and 11 of the Statutes define the activities of the Euroregion such as organizing common activities to promote common values; preparing, financing and realization of common development programs; organizing and developing of programs in the field of environmental protection, development of the cross-border co-operation in the field of traffic, communication, economy, tourism, science, education, culture, sport, etc. According to Article 11, these activities should be primarily directed to the establishment and promoting of such co-operation between the border regions. See: <[http://www.ddseuro.org/portal/images/pdf/dokument/Statut%20%20DDS%20-%20procisceni%20tekst%20\\_hr\\_.pdf](http://www.ddseuro.org/portal/images/pdf/dokument/Statut%20%20DDS%20-%20procisceni%20tekst%20_hr_.pdf)>. Accessed on: 4 apr. 2013).

this function to its President or vice-presidents, which confirms again the legal personality of this entity. Furthermore, in Article 1 of the Statutes this Euroregion is defined as an “organization”. Thereby, it is expressly established as an institutionalized, i.e. not *ad hoc* form of co-operation among its members. Such institutionalization is particularly visible in the existence of its permanent bodies as provided by Articles 18-36 of the Statutes, such as the Assembly, President, Executive Committee, Auditing Committee and Secretariat. Besides, the analogy with some of the IGOs is present also in the fact that Article 4 of the Statutes defines even the emblem, flag and the official seal of the Euroregion.

Finally, one could also find the additional argument that speaks in favor to the existence of another constitutive element common to IROs and IGOs – a personality of organization distinct from that of its members, particularly having in mind that the will of the organization will not always be necessarily identical to that of each and every of its members. After all, it is visible in the fact that the decisions within this one and many other euroregions, as well as in other IROs, are made by majority voting. However, these decisions will be equally binding for all their members including for those that have not given their affirmative vote.

Anyhow, the Euroregional co-operation Danube-Drava-Sava shows one more particularity in relation to its membership. Its constituent instrument (the Statutes) not only provides the possibility of acquiring the observer status for other regions of the States gravitating to these rivers,<sup>70</sup> but also in Article 12 it opens the membership of this euroregion for the non-territorial and non-governmental subjects of these States’ legal orders, such as industrial, trade or economic chambers and other commercial subjects acting in these States.

Finally, it is worth mentioning here the provision of Article 14 of the mentioned Statutes regulating the succession in the membership of this euroregion as an entity that according to the wording of its own Statutes – i.e. its basic *legal* document – *legally* should not have existed!

### 3 Hybrid or quasi-IROs (QUAIROs) – shared membership for states and sub-state entities

Talking about the EGTCs we have already mentioned the possibility provided in Article 3 of the Regulation 1082/2006 that opened the EGTCs membership not only to the subjects having legal personality in the public law of their States, but also to the EU member States themselves.<sup>71</sup> In addition, the same possibility can be found in Article 3 of the Protocol No. 3 to the Madrid Convention,<sup>72</sup> concerning the ECGs. As we have already mentioned, by analogy with the quasi-NGOs (QUANGOs) whose membership includes non-governmental, private organizations together with States or IGOs as subjects of public international law, the organizations having as their members the subjects of public law from different States (like earlier-mentioned various kinds of sub-State entities) and States or IGOs will be designated here as quasi-IROs (QUAIROs). Understood this way, it could be interesting to apply this criterion to some organizations almost unanimously accepted as IGOs, today with undisputable international legal personality. Thus, for example, the Nordic Council gathers in its membership not only the States (Denmark, Finland, Iceland, Norway and Sweden), but also some of their dependant territories such as Åland, Faroe Islands, and Greenland. By the same logic, some other IGOs like the WMO, WTO, or the Asian Development Bank could also be understood as QUAIROs, having in their membership States including the People’s Republic of China, together with Hong Kong as today its “sub-State entity”. Furthermore, beside Hong Kong, five “territories” - British Caribbean Territories, French Polynesia, Macao, Curaçao and Sint Maarten, and New Caledonia - participate in the WMO membership together with the member States. Finally, we could go here a step further understanding even the UN in the same way in the period 1945-1991 when two “sub-State entities” of the former USSR – Belarus and Ukraine – were full members of this organization.

70 See: Art. 16 of the Statutes. For the text see <[http://www.ddseuro.org/portal/images/pdf/dokumenti/Statut%20%20DDS%20-%20procisceni%20tekst%20\\_hr\\_.pdf](http://www.ddseuro.org/portal/images/pdf/dokumenti/Statut%20%20DDS%20-%20procisceni%20tekst%20_hr_.pdf)>. Accessed on: 4 apr. 2013).

71 On the other hand, Strazzari interestingly remarked: “[...] the direct involvement of the State in an EGTC is more difficult to put in place: such a move might be seen as a threat to the regional self-government rights.” STRAZZARI, D. Harmonizing trends vs. domestic regulatory frameworks: looking for the european law on cross-border cooperation, *European Journal of Legal Studies*, v. 4, n. 1, summer 2011. p. 203.

72 See: *supra*, note 28.

On the other hand, due to the historical circumstances a similar situation happened with one euroregion - the Alps-Adriatic Working Community in which two former republics of ex-Yugoslavia (Croatia and Slovenia) have continued its membership as the independent States following the dissolution of Yugoslavia in 1991.

As we have earlier mentioned, the Alps-Adriatic Working Community was founded in 1978 in Venice. Its founder members were Bavaria, Friuli-Venezia Giulia, Carinthia, Croatia, Upper Austria, Salzburg, Slovenia, Styria and Veneto, i.e. the regions from four States in that time: Austria, Germany, Italy and Yugoslavia. By signing the "Joint Declaration" the interregional cooperation between the border regions were transformed into an organization with its organs, organizational and procedural rules, and clearly defined tasks and aims.<sup>73</sup> Today, the Alps-Adriatic Working Community gathers six members: regions Burgenland, Carinthia, Styria, Vas and two States – Croatia and Slovenia.<sup>74</sup> According to its constitutional instrument the "Organisational and procedural rules of the Alps-Adriatic Working Community"<sup>75</sup> the main organs of the Community are the Plenary Assembly, the Commission of Executive Officers, the Steering Committee and the General Secretariat. The Plenary Assembly and the Commission may found the expert groups in accordance with the goals of the Community. The Plenary Assembly is the highest-ranking organ of the Community. Each member delegates one representative to the Assembly. Among its duties, the Assembly makes decisions on political matters that affect the Community, establishes the income to common funds and controls the financing of the particular projects within the field of activities of the Community (Rule 6.2). The Plenary Assembly meets at least once a year for a formal session, whereas an extraordinary session of the Assembly can be convoked by a minimum of one quarter of its members (Rules 6.4. and 6.7). The Commission of Executive Officers is the executive and coordinating

body of the Assembly composed of one representative by each member of the Community (i.e. the two States and the four sub-State entities) having equal rights and duties. The Commission makes technical preparations for the sessions of the Assembly and authorizes the founding or dissolution of expert groups and their project proposals supporting and monitoring of their realization. Also, the Commission has the duty to supervise and coordinate the work of the General Secretary (Rule 7.4). The Steering Committee's duties include particularly the coordination between the Plenary Assembly and the Commission supporting the executive officers in the implementation of the political mission of the Community, as well as in supporting of the Commission's activities in the work of the Assembly (Rule 8.6). Finally, the General Secretariat is an administrative and technical body of the Community. It is in charge of administrative support and coordination of the activities of the Assembly, Commission, and expert groups; as well as of the coordination of public relations of the Community (Rule 10.1-12).

According to the Preamble of the Organisational and procedural rules, the aims of the Working Community are to contribute to the consolidation of a peaceful, collective, democratic and pluralistic Europe; to promote friendship and wide-ranging collaboration between different peoples; as well as to build up its bridging functions between the regions of the member States of the EU and accession countries. In this context it is worth-noting that the Plenary Assembly of the Heads of Governments of the Alps-Adriatic Working Community passed in 2005 the Resolution "A Way Forward to Europe" in order, among other things, to support Croatia's EU entry that realized in July 2013.<sup>76</sup>

Furthermore, in the context of this Chapter some of the European river commissions, usually accepted as IGOs, according to their membership could also be understood as QUAIROs. Thus, for example, according to the Treaty of Ghent of 2002, the members of the International Scheldt Commission are Belgium, France, the Netherlands, and three Belgian regions: the Walloon Region, the Flemish Region and the Brussels Capital Region.<sup>77</sup> Similarly, the International Commission

73 Beside its organs, the Community has its Logo, as well as its anthem – the first 41 seconds of the Mendelssohn Bartholdy's 4<sup>th</sup> Symphony, 1<sup>st</sup> movement. See: para. 5.4. of the "Organisational and procedural rules of the Alps-Adriatic Working Community" of 2007. For the text see: <<http://alpeadria.org/english/index.php?page=595301927&f=1&i=595301927>>. Accessed on: 10 apr. 2013.

74 For more details see: <<http://www.alpeadria.org>>. Accessed on: 4 apr. 2013.

75 For the text *supra*, note 73.

76 The Resolution is available at: <<http://www.alpeadria.org/english/index.php?page=407896983&f=1&i=733044516&s=407896983>>. Accessed on: 14 sep. 2013.

77 The Treaty was signed on 3 December 2002 by the representatives of all the above-mentioned subjects and registered



for the Meuse gathers in its membership five States (Belgium, France, Germany, Luxembourg and the Netherlands) together with the three above-mentioned Belgian regions.<sup>78</sup> The tasks of the Commissions are similar and include the multilateral coordination regarding matters of common interest concerning the utilization, flood prevention and protection of these rivers. For that purpose both Commissions formulate advices and recommendations to their members, i.e. equally to the States and sub-State entities.

Also, we have already mentioned another specific QUAIRO in the AER's membership – the Working Community of the Danube Countries - ARGE Donauländer.<sup>79</sup> This being so, even the AER itself could be understood as a QUAIRO. Thus, beside the Danube regions, three States participate in the membership of this Working Community: Moldova, Serbia and Slovakia.<sup>80</sup> The Working Community was established in 1990 with the objective of promoting co-operation among its members for the development of the Danube area to serve the interests of its inhabitants and to foster peaceful co-operation in Europe. Among its most important achievements and the most significant projects are also some of *soft law* documents such as the “Study about the development of smaller harbours – Portino“, “Cultural Itinerary Danube“, the “Study on Traffic Development“, the “Cooperation between Danube Cities and Harbours – Donauhanse“, as well as the Projects “Portino II“ and “Donauhanse II“.<sup>81</sup>

In addition, talking about QUAIROs one more organization should be mentioned as well - the Working Community Pyrenees (Comunidad de Trabajo de los Pirineos - CTP). Its Members are three French regions (Aquitaine, Midi-Pyrénées, Languedoc-Roussillon); four Spanish Autonomous Communities (Catalonia, Aragon, Navarre, the Basque Country) all located in the Pyrenees mountain range; and one State - the Principality of Andorra. The organizational structure of the CTP is composed of several main organs also

by analogy with IGOs. The General Assembly is the plenary organ being in charge primarily of making political decision for the Community. The Assembly is consisted of the representatives of each member of the Community and it meets in regular sessions every year. In its international relations the CTP is represented by the Presidency headed successively by the presidents of the each Community member with a term of two years.

The Executive Committee is responsible for coordination and realization of the action programs and other decisions adopted by the General Assembly, usually on the basis of the previous proposals by the Presidency. The Committee as an executive organ in its work is supported by the four “thematic Commissions”: Commission I for the infrastructure and communication; Commission II for the training and technical development; Commission III for culture, youth and sport; and Commission IV for the sustainable development.

The Community is provided with its administrative organ – the General Secretariat which is responsible for the preparation of meetings of the Executive Committee, as well as for the coordination of its activities with the work of the General Assembly. The Secretariat is headed by a Secretary General appointed by the actual president with the agreement of the other members of the Community.<sup>82</sup>

Similarly to some other IROs, the CTP's participation in international law-making process is mostly visible in the form of “soft-law” documents intending to influence the policy of regional IGOs like the CoE and EU. In this context it is worth mentioning the two “soft law” documents: “*Contribution de la CTP au Livre Vert sur la cohésion territoriale*”<sup>83</sup> and “*Contribution au Livre Vert de la Commission Européenne sur les réseaux transeuropéens de transports*”.<sup>84</sup> All the activities contained

with the UN Secretariat pursuant to Article 102 of the UN Charter. The text of the Treaty is published in the *UNTS*, vol. 2351, 2009, pp. 13 et seq.

78 ACCORD international sur la Meuse. Available at: <<http://www.cipm-icbm.be/files/files/FR1.pdf>>. Accessed on: 3 oct. 2013.

79 See: *supra*, note 44.

80 See: <[http://www.argedonau.at/neu/arge/mitglieder/start\\_f.html](http://www.argedonau.at/neu/arge/mitglieder/start_f.html)>. Accessed on: 21 jan. 2014.

81 See: <[http://www.land-oberoesterreich.gv.at/cps/rde/xbcr/ooe/ARGE\\_KURZINFO\\_E.pdf](http://www.land-oberoesterreich.gv.at/cps/rde/xbcr/ooe/ARGE_KURZINFO_E.pdf)>. Accessed on: 21 jan. 2014.

82 For more details on the CTP see: <<http://www.ctp.org>>. Accessed on: 17 apr. 2013.

83 In the same document the objectives of the CTP are defined as follows: “*Les objectifs de la Communauté de Travail des Pyrénées sont: améliorer la qualité de vie de nos concitoyens en élargissant l'offre de transport; renforcer l'intégration transfrontalière; développer les complémentarités en matière économique pour les entreprises et les jeunes en formation; constituer une zone d'échanges au Sud de l'Europe capable de compter face aux pôles économiques du Nord; privilégier l'innovation, la recherche et la coopération inter-universitaire; et mettre en valeur nos territoires riches d'histoire et notamment notre patrimoine culturel et développer un tourisme durable.*” For the text see: <[http://www.ctp.org/documentacion/contribution\\_ctp\\_livre\\_vert\\_cohesion\\_territorial\\_fres.pdf](http://www.ctp.org/documentacion/contribution_ctp_livre_vert_cohesion_territorial_fres.pdf)>. Accessed on: 3 sep. 2013.

84 The activities of the CTP as defined in its “Bilan d'activités 2009-2010 et perspectives” include, among other



in these documents do not differ much from those which are often subjects to treaties concluded between States or IGOs. Understood this way, it seems that the need for co-operation embodied in the content and purpose of an international document, could prevail over its legal nature or the entities being “parties” thereto.

#### 4 Concluding remarks

Today, more than a decade ago that we entered the 21<sup>st</sup> century, one could maybe rightly question about dealing with a topic such as the legal personality in international law. This doubt seems even more convincing having in mind on the one hand the historical verdict in the ICJ famous “Reparation case” mentioned at the beginning of this paper,<sup>85</sup> and on the other the attitude that the subjects of international law are basically nothing more than the participants in legally regulated international relations.<sup>86</sup> Of course, we could go here much further dealing with, for example, the gendered approach to international legal personality,<sup>87</sup> or even with some of the quite extreme theories concerning the “fragmentation of the self”, and the Foucault’s “anti-subject approach” that announced the “end of the subject”.<sup>88</sup>

However, no matter how extensively some of theoreticians determine the concept of legal personality in international law, the consensus in international law doctrine seems to be much more conservative in recognizing of that personality to a new kind of participants in international legal relations, even if some

of them have obviously achieved international rights and duties, i.e. the legal capacity in international law. On the other hand, such an approach in international law doctrine should not surprise anybody taking into account that the recognition of international legal personality of a new kind of participants in international legal relations has always started with such a recognition given to the particular, “*sui generis*” entity that had broken the ice for all the future subjects of the same kind.

Analyzing IROs, it seems to us that the same logic of functionality in institutionalization of international co-operation has been the common denominator to the appearance of IGOs, as well as of such IGO-like entities this paper is dealing with. Consequently, any formal recognition of international legal personality for both of these kinds of organizations would have never had but a declaratory meaning. Thus, the ICJ “Reparation case” Advisory opinion has just confirmed the legal presence, i.e. the legal personality of the UN at that time. However, it has also anticipated the concept of objective, i.e. *erga omnes* legal personality for all the other organizations of the same kind, including for the future ones.<sup>89</sup>

Unfortunately, although the definition of subject of international law determined by the elements like the legal capacity (*capacitas iuridica*) and/or the capacity of an entity to produce legal consequences on its own (*capacitas agendi*) including the treaty-making capacity (*ius contrahendi*), the right of legation (*ius legationis*) or even the capacity to sue or be sued for the breach of an international legal obligation (*ius standi in iudicio*) could seem very clear, their argumentation in relation to every new-coming participant in legal relations within international community has often been faced with the inconsistencies in international law theory.

First, international law doctrine has never determined the “quantity” of rights and/or duties required for acquiring the legal capacity as the basic element of legal

things: “développement de l’aviation générale et du transport [...]; coopération en matière d’industrie aérodynamique; améliorer la sécurité des communications en zone de montagne transfrontalière; promouvoir et accompagner la mobilité transfrontalière; proposer des axes de travail commun dans le domaine de la formation professionnelle sur la base de projets existants dans chaque territoire de la CTP; etc. For the text of the documents see: <<http://www.ctp.org/documentacion.php?Id=1>>. Accessed on: 3 sep. 2013.

85 See: *supra*, note 1.

86 Cf. Higgins, HIGGINS, R. Conceptual thinking about the individual in international law. In: FALK, R. (ed.); KRATOCHWIL, F. (ed.); MENDLOWITZ, S. H. (ed.). *International law: a contemporary perspective*. Boulder; London: Westview Press, 1985. note 4, p. 480.

87 See: CHARLESWORTH, H.; CHINKIN Ch.; WRIGHT, Sh. Feminist approaches to international law, *AJIL*, v. 85, n. 4, 1991. p. 621-622.

88 See: For more details on the development of international legal personality in this period see: NIJMAN, J. E. *The concept of international legal personality: an inquiry into the history and theory of international law*. The Hague: T.M.C. Asser Press, 2004. p. 365-378.

89 Thus, Seyersted considered intergovernmental organizations “general subjects of international law”. SEYERSTED, F., *Objective international personality of intergovernmental organizations: do their capacities really depend upon their constitutions?* Copenhagen: Krohns Bogtrykker, 1963. p. 100. Only few decades later the ICJ clearly stated: “International organizations are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreement to which they are parties.” Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, *I.C.J. Reports* 1980, p. 89-90.

personality in international, or any other legal system. On the other hand, if in domestic legal orders, as well as in general legal theory rights and obligations were sometimes acquirable for the third party, why would international law be an exception here? Moreover, the earlier-mentioned Vienna Conventions on the Law of Treaties expressly provide this possibility.<sup>90</sup>

Anyhow, IROs and particularly TGOs (like INTERPOL or IPU) have achieved much more in acquiring the international rights and duties participating sometimes even directly, as we have seen, in international legal relations with States, IGOs (and other international law subjects) on their own. Moreover, Strazzari interestingly remarked the increasing trend favoring public nature of the cross-border co-operation by means of supranational documents such as the EU Regulation 1082/2006 concerning the EGTCs.<sup>91</sup>

On the other hand, these organizations become not only submitted to (at least customary) international primary norms which outlaw internationally wrongful acts, but also to international secondary norms providing the international responsibility for such acts.

Since the widely accepted understanding of the concept of international legal personality defines an international person as someone who is provided with rights and duties directly by international legal norms, being at the same time capable to breach these duties and responsible for such an internationally wrongful act, the acceptance of international legal personality of these organizations, not only in theory, but in international practice could contribute to disburden tensions in the inter-State relations by activating IROs' own international legal responsibility.

In addition, the argument that the States are still "the masters of the game",<sup>92</sup> as the reason for *a priori* denying international legal personality of EGTCs or other IROs does not seem to us very convincing. By the same logic, one could deny the international legal

personality of IGOs and even more that of individual. Similarly, there is no reason for denying the possibility of acquiring the international legal personality for the above-mentioned IGO-like entities using the argument that contemporary international law doctrine (still)<sup>93</sup> has not accepted the same personality for their members. Such an argument would mislead us to the negation of some other widely accepted international law subjects such as the Sovereign Order of Malta.

Finally, we have seen that IGO-like entities have influenced the law-making process in international community, sometimes indirectly through the "Statements", "Positions", "Position Papers", "Red Lists" and other kinds of "soft-law" instruments, but sometimes even by concluding international agreements no matter of their designation (e.g. Memorandum of Understanding, Co-operation Agreement, Headquarters Agreement etc.). Although the international law doctrine hesitates to accept their treaty character, one cannot neglect the rights and duties that result from some of these instruments not only for these entities but also for IGOs and States acting in their *iure imperii* capacity. Despite their formal distinction, the content of the mentioned agreements often does not differ much from those concluded between States and/or IGOs. Having in mind the mentioned Vienna Conventions on the Law of Treaties and their explicit recognition of the legal force in international law for the agreements concluded with or between "other subjects of international law" (Art. 3), one could easily conclude that such treaty-making capacity (*ius contrahendi*) of IGO-like entities offers the undeniable evidence for their international legal personality. However, due to the inconsistency in international law theory, the way to this conclusion is not that simple. Considering the treaty-making capacity as a proof of international legal personality we are faced with the situation similar to

90 Thus, for example, treaties providing for obligations and rights for third States, as well as for third organizations are provided in Articles 35 and 36 of the Vienna Conventions on the Law of Treaties, see: *supra*, note 7.

91 STRAZZARI, D. Harmonizing trends vs. domestic regulatory frameworks: looking for the european law on cross-border cooperation, *European Journal of Legal Studies*, v. 4, n. 1, summer 2011. note 19, p. 156.

92 Cf. MĂTUȘESCU, C. European juridical instruments of territorial cooperation: towards a decentralized foreign policy in Europe? *AGORA International Journal of Juridical Sciences*, n. 2, 2012. note 34, p. 92.

93 It should be noted here that in contemporary international law doctrine there is already a number of valuable books and articles dealing with the international legal personality of sub-State entities; see e.g.: MICHELMANN, H. J. (ed.); SOLDATOS, P. (ed.). *Federalism and international relations: the role of subnational units*. Oxford: Clarendon Press, 1990; DUCHACEK, I. D. (ed.); LATOUCHE, D. (ed.); STEVENSON, G. (ed.). *Perforated sovereignties and international relations: trans-sovereign contacts of subnational governments*. New York: Greenwood Press, 1988; PAQUIN, S. Les actions extérieures des entités subétatiques: quelle signification pour la politique comparée et les relations internationales? *Revue internationale de politique comparée*, v. 12, n. 2, 2005; DI MARZO, L. *Component units of federal states and international agreements*. Alphen aan den Rijn: Sijhoff & Nordhoff, 1980.

that of questioning what came first: a hen or an egg, since according to the international law of treaties only “subjects of international law” can be the parties thereto. Then where to cut the vicious circle? Maybe significantly, but Shaw is less restrictive here defining a treaty as “an agreement between parties on the international scene.”<sup>94</sup> Such an approach leads us again to the hypothesis from the beginning of this paper: neither international legal personality, nor international law should be the purpose in themselves. They serve the needs of international community and vary with them. Therefore, the IGO-like entities like TGOs, IROs, QUAIROs or other new-coming participants in international legal relations do not have to wait for some

94 SHAW, M. N. *International law*. 6 ed. Cambridge: Cambridge University Press, 2008. p. 903.

“New ‘Reparation case’ Advisory opinion” to obtain the international legal personality. After all, neither the UN had to in 1949. The subjects of international law appear, exist and die following the meta-juridical logic of functionality in international relations, and not due to the legal doctrine.

Reading these lines someone could maybe correctly consider that the thesis on international legal personality of these IGO-like entities (today still) goes too far. Maybe it leaves us with more questions than answers. However, writing on such a dynamic topic like the international legal personality is always dealing with the tendencies rather than with the pure facts. Otherwise, it might happen that our work had become out of date before it was completed.

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